

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the matter of:

Indian Bend Wash
Superfund Site (South Area)

SSID #AZD980695969

Respondents:

Leibovitz Enterprises Limited
Partnership; and
Y & S, Inc.
Parcel No. 132-41-043

U.S. EPA Docket
No. 93-04

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act of 1980
(42 U.S.C. §9606(a)).

ADMINISTRATIVE ORDER FOR
REMEDIAL INVESTIGATION

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I. AUTHORITY

This Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §106(a). The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, 52 Fed. Reg. 2923, and further delegated it to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-C. This authority has been redelegated to the Director, Hazardous Waste Management Division, EPA, Region 9 ("Director").

II. DEFINITIONS

A. "IBW Site" means the Indian Bend Wash Superfund Site (South Area) in Tempe, Arizona. The South area of the "IBW Site" is roughly bounded by Price Road on the east, Apache Boulevard on the south, Rural (Scottsdale) Road on the west, and the north bank of the Salt River on the north.

B. "Eldon Site" means assessor's parcel no. 132-41-043, located in Tempe, Arizona, as shown on the Maricopa County Assessor's map. Leibovitz Enterprises Limited Partnership ("Leibovitz Enterprises") currently owns the Eldon Site. Y & S Inc., is an Arizona corporation currently doing business as Eldon Drapery at parcel no. 132-41-043. The subsurface portion of the

Eldon Site includes areas below the surface of the property and adjacent areas to which hazardous substances have migrated.

C. "Day" means calendar day unless otherwise noted in this Order.

D. "Week" means calendar week, Sunday through Saturday, unless otherwise noted in this Order.

E. "Month" means calendar month unless otherwise noted in this Order.

F. "Soil Gas" means the gaseous phase volatile organic compounds and other gases present in the pore space of unsaturated soils.

G. "National Contingency Plan" and "NCP" shall refer to the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, including any future amendments thereto.

III. PARTIES BOUND

A. This Order shall apply to and be binding upon Leibovitz Enterprises Limited Partnership and Y & S, Inc. ("Respondents"), its directors, officers, employees, agents, successors and assigns. No change in ownership, corporate status or other control of Respondents shall alter Respondents' obligations under this Order. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants which are retained by Respondents to perform the work required by this Order, within five (5) days after the effective date of this Order or within five (5) days of retaining their services. Notwithstanding the terms of any

contract or agreement, Respondents are responsible for compliance with this Order and for ensuring that its employees, contractors, and agents comply with this Order.

B. Respondents shall not convey any title, easement, or other interest it may have in any property comprising the Eldon Site without including in the instrument of conveyance a provision requiring the continuous implementation of the provisions of this Order. Respondents shall provide a copy of this Order to any subsequent owner(s) or successor(s) before ownership rights are transferred. Respondents shall advise EPA in advance of any anticipated transfer of interest.

IV. FINDINGS OF FACT

A. Sherman and Yetta Leibovitz purchased parcel no. 132-41-043 in 1981. Sherman and Yetta Leibovitz transferred the parcel to Leibovitz Enterprises Limited Partnership in a warranty deed signed in February 1986 and recorded July 25, 1988. Eldon Drapery operated at parcel no. 132-41-043 ("Eldon Site") from 1988 to the present. Prior to 1988, the Eldon Site was used for storage of drapery fabric and window coverings. From 1988 to the present, the Eldon Site has been the location of a commercial dry cleaning operation that cleans various types of draperies. EPA has information indicating that perchloroethene ("PCE") was used in dry cleaning operations at the Eldon facility from 1988 to 1990, and may presently be used at the Eldon facility. Trichloroethene ("TCE") and 1,1,1-Trichloroethane ("TCA") were also used at the

Eldon facility. The waste solvents generated by the Eldon facility were stored on-site and transported off-site by at least one company, which reclaimed the solvent for use at its own facilities.

B. Y & S Inc., formerly known as Mastel Cleaners-Launderers, Inc., is an Arizona corporation doing business as Eldon Drapery at 1830 East Third Street in Tempe, Arizona (parcel no. 132-41-043).

C. The Indian Bend Wash Superfund Site was placed on the National Priorities List on September 1, 1983. The Indian Bend Wash Superfund Site, South Area is within the boundaries of the Indian Bend Wash Superfund Site. Indian Bend Wash was listed on the National Priorities List on the basis of volatile organic compounds ("VOCs") detected in samples from water supply wells. These VOCs include, but are not limited to, trichloroethene ("TCE"), perchloroethene ("PCE"), and 1,1,1-trichloroethane ("TCA"), which have been used as solvents by industrial facilities located within the Indian Bend Wash Superfund Site boundaries.

D. In May 1988, EPA collected and analyzed three soil gas samples from the Eldon Site. Sampling data indicated that there was a relatively small amount of PCE in the subsurface soils immediately north of the building at the Eldon Site and in the southeast corner of the Eldon Site.

E. In October 1990, EPA collected and analyzed eight soil gas samples from the Eldon facility. These samples again indicated the presence of PCE in the subsurface soils and that relatively large amounts of PCE were in the soils immediately west of the facility. Sampling data also indicated the presence of 1,1,1-trichloroethane

and 1,1-dichloroethene in the subsurface soils.

F. Perchloroethene has a wide range of health effects, including depression of the central nervous system and narcosis. It is irritating to mucous membranes and skin, can cause lung edema and is a probable human carcinogen. Inhalation of perchloroethene may produce irritation of the respiratory tract, nausea, headache, sleeplessness and abdominal pains.

V. CONCLUSIONS OF LAW

A. The Eldon Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

B. Respondents are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

C. Perchloroethene, 1,1,1-trichloroethane and 1,1-dichloroethene are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

D. The past, present, and potential migration of hazardous substances from the facility constitutes an actual or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

E. Leibovitz Enterprises Limited Partnership has been the "owner" of the Eldon Site, as defined in Section 101(20) of CERCLA, 42 U.S.C. §9601(20), from 1988 to the present.

F. Y & S, Inc., formerly known as Mastel Cleaners-Launderers, Inc. has been an "operator," as defined in Section 101(20) of CERCLA, 42 U.S.C. §9601(20), from 1988 to the present.

G. Respondents are potentially responsible parties as defined

in Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

VI. DETERMINATIONS

A. The Director has determined that an actual or threatened release of hazardous substances from the Eldon Site may present an imminent and substantial endangerment to the public health, welfare, and the environment.

B. The actions required by this Order are necessary to protect the public health, welfare and the environment.

C. If performed satisfactorily, the actions required by this Order shall be consistent with the National Contingency Plan, 40 CFR Part 300 ("NCP").

VII. NOTICE TO THE STATE

Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), EPA has notified the State of Arizona of the issuance of this Order by providing the Arizona Department of Environmental Quality with a copy of this Order.

VIII. WORK TO BE PERFORMED

A. General Provisions

1. All work shall be conducted in accordance with: CERCLA; the NCP; EPA "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA" (EPA, October 1988) (collectively referred to herein as "RI/FS Guidance"); the standards, specifications, and schedules contained in the Work Plan;

the guidance referenced in Section IX of this Order (Sampling, Access, and Data/Document Availability); and any other applicable EPA guidance documents.

2. All work performed by or on behalf of Respondents pursuant to this Order shall be performed under the direction and supervision of an Arizona registered civil engineer or Arizona registered geologist with expertise in hazardous waste site investigation. Within twenty-one (21) days from the effective date of this Order, Respondents shall notify EPA in writing of the name, title and qualifications of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Order. The qualifications of the persons undertaking the work for Respondents shall be subject to EPA's approval. If EPA disapproves in writing of any person's technical and/or experience qualifications, Respondents shall notify EPA of the identity and qualifications of the replacement(s) within fifteen (15) days of Respondents' receipt of EPA's written notice. A subsequent EPA disapproval of the replacement(s) shall be deemed a failure to comply with Order.

3. Subsequent to selection of the registered engineer, registered geologist, contractors, or subcontractors as described in Paragraph VIII.A.2., above, Respondents may propose that different individuals, contractors and/or subcontractors direct and supervise the work required by this Order. If Respondents wish to propose such a change, Respondents shall notify EPA in writing of the name, title, and qualifications of the proposed individuals and

the names of principal contractors and/or subcontractors proposed to be used in carrying out the work required by this Order. Any such individual, contractors and/or subcontractors shall be subject to approval by EPA. EPA shall give Respondents its approval or disapproval within thirty (30) days of receiving from Respondents the information required by this paragraph. The naming of any replacement(s) by Respondents shall not relieve Respondents of any of their obligations to perform the work required by this Order. A subsequent EPA disapproval of the replacement(s) shall be deemed a failure to comply with this Order.

4. All work plans, schedules, and other reports that require EPA's approval and are submitted by Respondents pursuant to this Order are incorporated into this Order and made a part hereof upon approval by EPA. All work plans, schedules, and other reports written by EPA pursuant to this Order are incorporated into this Order and made a part hereof when such work plans, schedules, and other reports are finalized by EPA.

5. All required sampling and sample analyses shall be conducted in compliance with Section IX of this Order at a laboratory using EPA-approved methods and procedures.

B. Work and Deliverables

Based on the Findings of Fact, Conclusions of Law, and Determinations set forth above, EPA hereby orders Respondents to perform the following work under the direction of EPA's Remedial Project Manager, and to comply with all the requirements of this Order. Respondents shall perform and complete the activities set

forth in the Statement of Work ("SOW") (Attachment A to this Order), including but not limited to preparation of the Investigation Plan, the Groundwater Plan, and the Health and Safety Plan; performance of the field work described in the Investigation Plan and the Groundwater Plan; and preparation of a Focused Remedial Investigation Report. All such work shall be conducted in accordance with Attachment A; Attachment B (Standard Field and Analytical Procedures Document for SIBW), unless otherwise granted a variance by EPA in accordance with Section VIII B. 3; Attachment C (Well Installation Locations); CERCLA; the NCP; and applicable EPA guidance. EPA will prepare the Risk Assessment portion of the RI pursuant to applicable EPA guidance. Respondents shall communicate regularly with EPA to assure that deliverables contain sufficient detail.

1. Respondents shall develop and submit to EPA for approval an Investigation Plan, within the time frame specified in Section VIII. B.7 of this Order. The Investigation Plan shall conform to the requirements specified in Attachment A of this Order. Respondents shall submit to EPA for review and comment both a mid-point and complete draft of the Investigation plan, as defined in Attachment A (Section III.A and V.) and Section VII. B. 7. of this Order. Within two weeks of submittal of the mid-point draft, and upon no less than five days notice to Respondents, EPA shall hold a meeting with Respondents to discuss the mid-point draft and to provide EPA's verbal or written comments. Respondents shall address all such comments in completing the complete draft.

If EPA fails to hold a meeting within the two week time frame, Respondents shall be extended an amount of time to submit the complete draft equal to the difference in days between the date two weeks after submittal of the mid-point draft, and the date the meeting is actually held. Delays in the meeting date caused by the Respondents shall not be grounds for extensions or Force Majeure. Upon receipt of EPA's comments on the complete draft, Respondents shall revise the draft, fully addressing EPA's comments, within the time frames specified in Section VIII. B.7 of this Order, to produce a final draft of the Investigation Plan. The Investigation Plan, produced according to the specifications and requirements of Attachment B, unless otherwise granted a variance by EPA in accordance with Section VIII. B.3. of this Order, shall serve as a standard EPA Work Plan, Sample Plan, and Quality Assurance Plan for the remedial investigation work specified in Attachment A, excluding the groundwater investigation work.

2. Respondents shall develop and submit to EPA for approval a Groundwater Plan, within the time frame specified in Section VIII. B.7 of this Order. The Groundwater Plan shall conform to the requirements specified in Attachment A of this Order. Upon receipt of EPA's comments on the draft, Respondents shall revise the draft, fully addressing EPA's comments, within the time frames specified in Section VIII. B.7 of this Order, to produce a final draft of the Groundwater Plan. The Groundwater Plan, produced in accordance with the specifications and requirements of Attachment B, unless otherwise granted a variance

by EPA in accordance with Section VIII B. 3. of this Order, shall serve as a standard EPA Work Plan, Sample Plan, and Quality Assurance Plan for groundwater work.

3. Respondents shall submit plans and conduct field activities which shall directly incorporate and comply with Attachment B of this Order, unless granted a variance by EPA as specified in the following paragraph.

If Respondents believe that methods, protocols, or quality control methods ("procedures") that differ from those specified in Attachment B would be more appropriate for this Site, or would produce equivalent results at lower cost, then Respondents may submit, in writing, a request to EPA for a variance. The variance request shall identify with specificity the procedures that Respondents intend to alter, and the specific reasons for the alteration. Respondents shall not utilize any altered procedure in the laboratory or the field, and shall not incorporate any altered procedure into any of the planning documents, unless the variance is granted by EPA in writing. Variances are granted solely at the discretion of EPA. Request for a variance shall not be cause for delay in submitting the deliverables due under this Order.

4. Respondents shall produce a Health and Safety Plan for the site in accordance with OSHA Regulations set forth at 29 C.F.R. §1910.120, for safety at hazardous waste sites. The Health and Safety Plan shall meet the specifications in Attachment A of this order and all applicable regulations. The Health and Safety Plan shall be submitted to EPA within the time frame specified in

Section VIII. B.7 of this Order. EPA may comment on this Plan, but it will not be subject to EPA approval.

5. Respondents shall develop and submit to EPA for approval a Focused Remedial Investigation Report within the time frame specified in Section VIII. B.7 of this Order. The Focused Remedial Investigation Report shall include the requirements specified in Attachment A of this Order. Upon receipt of EPA's comments on the draft, Respondents shall revise the draft, fully addressing EPA's comments, within the time frames specified in Section VIII. B.7 of this Order, to produce a final draft of the Report.

6. Respondents shall provide monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. At a minimum, these progress reports shall include: (1) a description of progress made during the reporting period; (2) a summary of items submitted to EPA under the Order during the reporting period; (3) a list of samples submitted for chemical analysis, including those for which analyses have been returned, and those for which analyses have not been returned, during the reporting period; (4) results of all sample analyses and/or tests or other technical data generated by Respondents or on Respondents' behalf during the reporting period; (5) a description of work planned, including schedules, for the next two months after the reporting period; (6) a description of all problems encountered and solutions developed and implemented for those problems during the reporting period; and (7) a description of all problems anticipated

in the next two months following the reporting period.

7. Respondents shall submit the deliverables listed below, in accordance with the schedule set forth below.

a) **Investigation Plan**

Mid-Point Draft

Due 45 days after effective date of this Order.

(includes items A through G as described in Section V of Attachment A)

Final Draft

Due 15 days after receipt of EPA comments on the Mid-Point Draft, or as specified in Section VIII. B.1.

(includes all items A through M as described in Section V of Attachment A)

Final Plan

Due 30 days after receipt of EPA comments on Final Draft.

b) **Groundwater Plan**

Draft

Due 45 days after effective date of this Order.

Final

Due 21 days after receipt of EPA comments on Draft.

- c) **Health & Safety Plan** Due 15 days after the final draft Investigation Plan is submitted.
- d) **Focused Remedial Investigation Report**
- Draft Due 90 days after field work is completed.
- Final Due 30 days after Respondents receive EPA comments on Draft.
- e) **Monthly Progress Reports** Due the 10th of every month following the effective date of this Order.

8. With the exception of the Health & Safety Plan, EPA shall review, comment on, and approve or disapprove each plan, report, or other deliverable submitted by Respondents. Respondents shall revise deliverables to respond to and address all EPA comments on draft deliverables. EPA intends to review all plans (with the exception of the Health & Safety Plan), reports, and other deliverables within thirty (30) days of receipt of each document. EPA shall notify Respondents in writing of EPA's approval or disapproval of a final deliverable or if EPA requires additional review time. In the event of any disapproval, EPA shall

specify the reasons for such disapproval, EPA's required modifications, and a time frame for submission of the revised report, document, or deliverable. If the modified report, document or deliverable is again disapproved by EPA, EPA shall first notify Respondents and then may draft its own report, document or

deliverable and incorporate it as part of this Order, and/or seek penalties from Respondents for failing to comply with this Order, and/or conduct the remaining work required by this Order and recover the costs thereof from Respondents.

9. All documents, including monthly progress reports, technical reports, and other correspondence required to be submitted by Respondents pursuant to this Order, shall be sent to the following addressees or to such other addressees as EPA hereafter may designate in writing, and shall be deemed submitted on the date received by EPA. Respondents shall submit two (2) copies of each document to EPA.

Documents required to be submitted to EPA shall be sent to:

Roberta Riccio
Remedial Project Manager (H-7-2)
Hazardous Waste Management Division
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
Phone: (415) 744-2369

One copy shall also be sent to each of the following:

Mr. Byron James
Arizona Department of Environmental Quality
Remedial Projects Unit
P.O. Box 600
Phoenix, Arizona 85001-0600

Mr. Paul Kunkel
CH2M-Hill
P.O. Box 28440
Tempe, Arizona 85285-8440

10. Upon approval by EPA of the Groundwater Plan, Respondents shall perform the work, including field work and sampling, required by the Groundwater Plan or otherwise required by this Order. Upon approval by EPA of the Investigation Plan, Respondents shall carry out the work, including field work and sampling, required by the Investigation Plan or otherwise required by this Order. Respondents shall not begin any field work prior to EPA's approval of the planning documents as specified above, or without the prior written approval of EPA. As specified in CERCLA Section 104(a)(1), 42 U.S.C. § 9604(a)(1), EPA will oversee all of Respondents' activities throughout the field work. Respondents shall notify EPA prior to commencement of any field work.

IX. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

A. While conducting the sample collection and analysis activities required by this Order, Respondents shall use the quality assurance, quality control, and chain of custody procedures described in the "NEIC Policies and Procedures Manual," May 1986, EPA-330/9-78-001-R; "U.S. EPA Region 9 Guidance for Preparing Quality Assurance Project Plans for Superfund Remedial Projects," 9QA-03-00, U.S. EPA Region 9 QAMS, September 1989; and "Field and Analytical Methods - South Indian Bend Wash Site, Tempe, Arizona" (Attachment B to this Order), and upon receipt by Respondents from

EPA, any final amended or superseding versions of such documents. To provide quality assurance and maintain quality control, Respondents shall:

1. Use a laboratory which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80;

2. Ensure that EPA personnel and/or EPA authorized representatives are allowed access to the laboratory and personnel used by Respondents for analysis;

3. Ensure that the laboratory used by Respondents for analysis performs such analyses according to a method or methods approved by EPA in the Field Sampling Plan and Quality Assurance Project Plan. These plans shall be incorporated into the Investigation and Groundwater Plans. These plans must be submitted by Respondents within the time frames specified in Section VIII. B.7 of this Order.

B. At the request of EPA, Respondents shall provide to EPA and/or its authorized representatives split or duplicate samples of any samples collected by Respondents as part of the Work Plans. Respondents shall notify EPA in the preceding monthly report of any planned sample collection activity or, if circumstances preclude notice in the preceding monthly report, no later than seven (7) days prior to the planned sampling event.

C. Nothing in this Order shall be interpreted as limiting EPA's inspection or information gathering authority under federal law.

D. For purposes of this Order, EPA's authorized representatives shall include, but not be limited to, the Arizona Department of Environmental Quality and consultants and contractors hired by EPA to oversee activities required by this Order.

X. OTHER APPLICABLE LAWS

A. Respondents shall undertake all actions required by this Order in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided under CERCLA or unless Respondents obtain a variance or exemption from the appropriate governmental authority.

B. Any materials removed from the facility shall be disposed of or treated at a facility that complies with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3).

XI. RECORD PRESERVATION

Respondents shall maintain, during the pendency of this Order and for a minimum of ten (10) years after EPA provides notice to Respondents that the work has been completed, a central depository of the records and documents required to be prepared under the Work Plans. In addition, Respondents shall cause to be retained copies of the most recent version of all documents that relate to hazardous substances at the Eldon Site and that are in its possession or in the possession of its employees, agents, contractors, or attorneys. After this ten (10) year period, Respondents shall

notify EPA at least thirty (30) days before the documents are scheduled to be destroyed. If EPA so requests, Respondents shall provide these documents to EPA.

XII. DESIGNATED PROJECT MANAGERS

A. EPA designates Roberta Riccio, an employee of Region 9 of EPA, as its Remedial Project Manager ("RPM") who shall have the authorities, duties, and responsibilities vested in the Remedial Project Manager by the NCP. Within fifteen (15) days of the effective date of this Order, Respondents shall designate a Project Coordinator who shall be responsible for overseeing Respondents' implementation of this Order. The EPA Remedial Project Manager will be EPA's designated representative. To the maximum extent possible, all oral communications between Respondents and EPA concerning the activities performed pursuant to this Order shall be directed through EPA's Remedial Project Manager and Respondents' Project Coordinator. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be delivered in accordance with Paragraph VIII.B.9 of this Order.

B. EPA and Respondents may change their respective Remedial Project Manager and Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least one week prior to the change except in the case of an emergency, in which case notification shall be made orally followed by written

notification as soon as possible.

C. Consistent with the provisions of this Order, the EPA Remedial Project Manager shall also have the authority vested in the On-Scene Coordinator ("OSC") by the NCP, unless EPA designates a separate individual as OSC, who shall then have such authority. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Order and/or undertake any response actions (or portions of the response action) when conditions present or may present a threat to public health or welfare or the environment.

D. The absence of the EPA RPM or OSC from the Site shall not be cause for the stoppage of work. Nothing in this Order shall limit the authority of the OSC or the EPA Remedial Project Manager under federal law.

XIII. MODIFICATION OF WORK REQUIRED

A. In the event of unanticipated or changed circumstances at the Eldon Site, Respondents shall notify the EPA RPM, or, if the EPA's RPM is unavailable, the EPA OSC by telephone within twenty-four (24) hours of discovery of the new or changed circumstances. This verbal notification shall be followed by written notification postmarked within five (5) days of discovery of the new or changed circumstances.

B. The Director may determine that in addition to tasks addressed herein, additional work may be required. Where consistent with Section 106(a) of CERCLA, the Director may direct as an

amendment to this Order that Respondents perform these response actions in addition to those required herein by any plan. Respondents shall implement the additional tasks which the Director identifies. The additional work shall be completed according to the standards, specifications, and schedules identified by the Director.

XIV. SITE ACCESS

A. Respondents shall permit EPA and its authorized representatives to have access at all times to the Eldon Site to monitor any activity conducted pursuant to the Work Plans and to conduct such tests or investigations as EPA deems necessary. Nothing in this Order shall be deemed a limit upon EPA's authority under federal law to gain access to the Eldon Site.

B. To the extent that Respondents require access to land other than land they own in carrying out the terms of this Order, Respondents shall, within forty-five (45) days of the effective date of this Order, obtain access for EPA, its contractors and oversight officials; state oversight officials and state contractors; and Respondents or their authorized representatives. If Respondents fail to gain access within forty-five (45) days, they shall continue to use their best efforts to obtain access until access is granted. For purposes of this paragraph, "best efforts" includes but is not limited to, the payment of money as consideration for access. If access is not provided within forty-five (45) days of the effective date of this Order, the EPA may

obtain access under Sections 104(e) or 106(a) of CERCLA.

XV. DELAY IN PERFORMANCE

A. Any delay in performance of this Order that, in the EPA's judgment, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

B. Respondents shall notify EPA of any delay or anticipated delay in performing any requirements of this Order. Such notification shall be made by telephone to EPA's RPM within forty-eight (48) hours after Respondents first know or should know that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justifications for any delay in performance.

C. If Respondents are unable to perform any activity or sub-

mit any document within the time required under this Order, Respondents may, prior to the expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay. Submission of an extension request shall not affect Respondents' obligation to comply with the requirements of this Order.

D. If EPA determines that good cause exists for an extension of time, it may grant a request made pursuant to Subparagraph C, above, and specify in writing a new schedule for completion of the activity and/or submission of the document.

XVI. ENDANGERMENT AND EMERGENCY RESPONSE

A. In the event of any action or occurrence during the performance of the work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's RPM, or, if the RPM is unavailable, EPA's OSC. If neither of these persons is available, Respondents shall notify the EPA Emergency Response Unit, Region 9, Phone Number (415) 744-2000. Respondents shall take all necessary action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the NCP, all Plans specified in Section VII of this Order, and the Health and Safety Plan.

B. Nothing in the preceding paragraph shall be deemed to

limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Eldon Site.

XVII. ASSURANCE OF ABILITY TO COMPLETE WORK

A. Respondents shall demonstrate their ability to complete the work required by this Order and to pay all claims that arise from the performance of the work by obtaining and presenting to EPA within forty-five (45) days of the effective date of this Order, one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information sufficient, in EPA's opinion, to allow EPA to determine that Respondents have sufficient assets available to perform the work. Respondents shall demonstrate financial assurance in an amount no less than the estimate of cost for the remedial investigation in the Investigation Plan and Groundwater Plan. If Respondents seek to demonstrate ability to complete the remedial investigation by means of internal financial information, or by guarantee of a third party, they shall re-submit such information annually on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondents shall, within fifteen (15) days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other forms of financial assurance listed above.

B. Within forty-five (45) days of the effective date of this

Order, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of performance of the work required by this Order.

XVIII. DISCLAIMER

The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, representatives, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States shall be held liable as a party to any contract entered into by Respondents, or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XIX. ENFORCEMENT AND RESERVATIONS

A. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondents. This shall

include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support oversight cost demand, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. §9607.

B. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of this response action) and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

C. Nothing in this Order shall preclude EPA from taking any additional enforcement action, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. §9607(a), et seq., or any other applicable law. Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C. §9607(a), for the costs of any such additional actions.

D. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Resource Conservation and Recovery Act and any other applicable statutes or regulations.

E. Respondents shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. §9606(b), of not more than \$25,000 for each day in which Respondents violate or fail to comply with the requirements of this Order. In addition, failure to take

response action in compliance with this Order, or any portion hereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3), for punitive damages in an amount at least equal to, and not more than three (3) times the amount of any costs incurred by the Hazardous Substance Superfund, as a result of such failure to comply.

F. Notwithstanding compliance with the terms of this Order, including the completion of an EPA-approved remedial investigation, Respondents are not released from liability, if any, for any enforcement actions beyond the terms of this Order taken by EPA respecting the Site.

G. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any other legal authority, including the right to seek injunctive relief, monetary penalties, reimbursement of response costs, and punitive damages for any violation of law or this Order.

H. EPA expressly reserves all rights and defenses that it may have, including the EPA's right both to disapprove of work performed by Respondents and to request that Respondents perform tasks in addition to those detailed in the Work Plans, as provided in Section VIII (Work to be Performed) of this Order.

I. This Order does not release Respondents from any claim, cause of action or demand in law or equity, including, but not limited to, any claim, cause of action, or demand which lawfully may be asserted by representatives of the United States or the State of Arizona.

J. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval as may be required by this Order.

XX. NOTICE OF INTENT TO COMPLY

Respondents shall, within twenty (20) days of the effective date of this Order, provide written notice to EPA stating whether they will comply with the terms of this Order. Failure to respond, or failure to agree to comply with this Order, shall be deemed a refusal to comply with this Order.

XXI. OPPORTUNITY TO CONFER

A. Respondents may, within five (5) days of the effective date of this Order, request a conference with EPA's Director of the Hazardous Waste Management Division, or whomever the Director may designate except for the Remedial Project Manager, to discuss this Order. If requested, the conference shall occur within fourteen (14) days of the request at EPA's Regional Office, 75 Hawthorne Street, San Francisco, California.

B. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intend to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this

Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative. Requests for a conference shall be made by telephone or letter to Roberta Riccio, Remedial Project Manager (H-7-2), (415) 744-2369, 75 Hawthorne Street, San Francisco, California 94105.

XXII. SEVERABILITY

If any provision or authority of this Order or the application of this Order to any circumstance is held by a court to be invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby, and the remainder of this Order shall remain in force.

XXIII. STATE AND LOCAL AGENCY PARTICIPATION

Respondents shall make available, upon request of EPA's Remedial Project Manager, copies of any deliverable required by this Order to the State of Arizona for review. EPA will provide Respondents with a current mailing list of state agencies prior to the effective date of this Order. After the agencies have had the opportunity to review the deliverables, EPA may meet with the agencies to discuss the deliverables and prepare collaborative comments. Any collaborative comments and/or comments prepared by or on behalf of EPA shall be submitted to Respondents as EPA's

comments. Respondents shall respond to all of these comments as required by the terms of Section VIII (Work to be Performed).

XXIV. EFFECTIVE DATE

This Order is effective five (5) days after the date of signature by the Director.

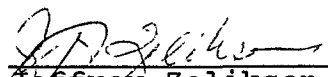
XXV. TERMINATION AND SATISFACTION

The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this Order, including any additional tasks which EPA has determined to be necessary, have been completed.

IT IS SO ORDERED:

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

By:



Jeffrey Zelikson
Director

Hazardous Waste Management Division
Region 9

Date: FEB 11 1993

EPA Region 9 Contacts:

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